IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 13TH DECEMBER 2006 / 22ND AGRAHAYANA 1928

Crl.Rev.Pet.No. 988 of 1998()

(From the judgment dated 31-10-98 in Crl.A/161/98 on the file of the court of Sessions,. Trichur from S.T.1987/92 on the file of the Judicial First Class Magistrate Court, Chalakudy.)

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REVN. PETITIONER/APPELLANT/ACCUSED:

SEKHARAN,
S/O VELU, ELINJIPRA HOUSE,
KURUVILASSERY VILLAGE AND DESOM.

BY ADV. SRI.T.M.CHANDRAN
SRI.S.SUJITH

RESPONDENTS/COMPLAINANT:

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1. RAJAN
S/O KRISHNANKUTTY, PERUMBILLISSERY HOUSE,
EAST CHALAKUDY VILLAGE AND DESOM.

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA AT ERNAKULAM.

BY ADV. SRI.V.SANTHARAM
PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 13/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P.BALACHANDRAN, J.

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Cr.R.P.NO.988 OF 1998

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Dated this the 13th day of December 2006

ORDER

The accused convicted for offence under Section 138 of N.I. Act and sentenced thereunder is the petitioner in this revision. The sentence awarded to him by the trial court was simple imprisonment for 9 months. He was further directed to pay an amount of Rs.40,000/- as compensation to the complainant under Section 357(3) Cr.P.C. and in default to undergo simple imprisonment for a further term of three months. In appeal, the Sessions Judge confirmed the conviction but modified the sentence to one of fine of Rs.47,500/- only and in default to undergo R.I. for a period of three months. It is challenging the concurrent conviction under Section 138 of the N.I. Act and the modified sentence that the accused have come up in revision.

2. The contentions that are advanced before me by the learned counsel for the petitioner are (i) that the petitioner was being made to open an account after putting him under influence of liquor by his friend Bilan who himself obtained the passbook and the cheque book from the Bank; that he was not aware of the consequence of Bilan retaining the passbook and the cheque book

and he understood the seriousness only on receipt of lawyer notice and summons from the court and that the accused had actually not signed in Ext.P1 cheque and (ii) that the modified sentence awarded by the Sessions Court is illegal as no fine above Rs.5,000/- could be imposed as the case is one that was disposed of by a Judicial First Class Magistrate.

3. The contention of the accused is that he was made to drink by his friend Bilan and while under influence of liquor he was taken to the Bank by Bilan and caused an account to be opened and Bilan himself was retaining the passbook and the cheque book and he has not issued Ext.P1 cheque to the complainant. Apart from raising such a contention, the petitioner has not taken any steps to examine the said Bilan as a witness and no attempt was made also to examine the Bank Manager or other officer of the Bank who did the opening of the account for the petitioner. It is worthy to note that the complainant who is the first respondent in this revision has given evidence as PW1 that the accused has signed in Ext.P1 cheque and that he was so signing in Ext.P1 cheque in his presence. Nothing is brought out in cross examination to discard the testimony of PW1. The petitioner has no case that Ext.P1 cheque is

not one drawn on his account. When the cheque is one drawn on his account, unless he establishes his contention that the account was caused to be opened by his friend Bilan rendering him under influence of liquor, he cannot rest by contending that he has not issued cheque to the complainant. Admittedly, he has received notice issued through lawyer consequent on dishonour of Ext.P1 cheque for an amount of Rs.40,000/-. Any ordinary prudent man would be alerted on receipt of such a notice and would have immediately reacted thereto by issuing a reply notice stating the details and also would have taken action against Bilan and would have at the same time taken steps to see that no further transactions are effected in the account so opened. Strangely enough the petitioner has not caused any reply to be issued to the notice received by him intimating him of the dishonour of Ext.P1 cheque. When he tendered evidence as PW1 he has stated that he had entrusted the notice to a lawyer for issuing a reply notice and has stated that the said lawyer is not the counsel appearing for him in court. At the same time, he does not mention the name of the lawyer with whom he entrusted the notice to issue a reply. Under these circumstances, the contention that Ext.P1 cheque is not one

issued by the petitioner cannot be swallowed except with a pinch of salt.

4. It is further contented by the counsel for the petitioner that the cheque was forwarded to hand writing expert for expert opinion and the expert has given a report and that has not been taken into account by the courts below. The said argument also is devoid of merit. The handwriting expert has stated only that probably it could be that the signature in Ext.P1 might not have been put by the petitioner whose alleged standard signature was forwarded for examination. The learned Magistrate has opined that the signatures supplied as standard signatures for comparison were not signatures of the petitioner taken from any authentic document executed contemporaneously with opening of the Bank account but was signatures put by him subsequently. Such signatures cannot be accepted as standard signatures so as to make comparison with disputed signatures so as to get an authentic opinion from an expert. All the contentions raised by the petitioner in the above circumstances was rightly being discarded by the courts below. In the light of the discussions made above, I do not find any illegality or impropriety in the judgments of the courts below finding the

petitioner guilty of the offence under Section 138 of N.I. Act and therefore, I confirm the conviction of the petitioner for offence under Section 138 of N.I. Act.

5. All the same, the sentence awarded by the learned Magistrate was modified in appeal by the Sessions Judge to one of fine of Rs.47,500/- in default of payment of which the petitioner was to undergo R.I. for a period of three months. It is to be noted that the trial of the case was being conducted by the Judicial First Class Magistrate, Palakkad. A Judicial First Class Magistrate is not competent to impose a fine more than Rs.5,000/- and a Sessions Judge considering an appeal preferred from judgment of the Judicial First Class Magistrate also has no competency to award sentence of fine exceeding Rs.5,000/-.

In the result allowing this Revision in part I modify and reduce the sentence of fine imposed by the Sessions Judge to fine of Rs.5,000/- only. However, the default sentence is maintained. The fine amount, if realised, shall be paid over to the first respondent/complainant.

K.P.BALACHANDRAN, JUDGE

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K.P.BALACHANDRAN, J.

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Cr.R.P.NO.988 OF 1998

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ORDER

Dated, 13th day of December 2006